

# JUDGE COTE

JOHN ERIC OLSON (JO#4394)  
HILL RIVKINS & HAYDEN LLP  
Attorneys for Plaintiff  
45 Broadway, Suite 1500  
New York, NY 10038

07 CV 9643

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
ST. PAUL FIRE & MARINE INSURANCE  
COMPANY,



Plaintiff,

Docket No.

- Against -

**Complaint**

U.S. AIRWAYS,

Defendant.  
-----X

The Plaintiff, ST. PAUL FIRE & MARINE INSURANCE COMPANY, (hereinafter "St. Paul") through its attorneys, Hill Rivkins & Hayden LLP, complaining of the above-named defendant, alleges upon information and belief:

**FIRST:** This Court has jurisdiction pursuant to 49 U.S.C. § 40105, in that this was an international air carriage of cargo departing from Bensenville, Illinois, and destined for Carolina, Puerto Rico, which is subject to the Convention for the Unification of Certain Rules Relating to International Transportation by Air, 49 Stat. 3000, T.S. 876 (1934) commonly known as "The Warsaw Convention".

**SECOND:** At and during all times hereinafter mentioned, Plaintiff, ST. PAUL, was and now is a corporation or other business entity organized and existing by virtue of the laws of

Delaware, with an office and place of business at 100 Baylis Road, P.O. Box 9093, Melville, NY 11747-9093, and is the subrogated cargo underwriter who paid the claim to Service By Air.

**THIRD:** At and during all times hereinafter mentioned, Defendant, U.S. AIRWAYS, was and now is a corporation or other business entity organized and existing by virtue of the laws of one of the States of the United States with an office and place of business at 1 E. 59<sup>th</sup> Street, New York, NY 10022 and was and now is a common carrier, warehouseman and/or bailee.

**FOURTH:** On or about March 8, 2007, there was delivered to the defendant in good order and condition a shipment of oxygen meters, suitable in every respect for the intended transportation which defendant received, accepted and agreed to transport and/or store for certain consideration, under AWB 03761800222 dated March 8, 2007 consigned to Service By Air.

**FIFTH:** Thereafter, the defendant failed to deliver the shipment in the same good order and condition.

**SIXTH:** Plaintiff's subrogee was the shipper, consignee or owner of said shipment, and Plaintiff is the subrogated underwriter who insured the cargo and brings this action on its own behalf and, as agent and trustee, on behalf of and for the interest of all parties who may be or become interested in the said shipment, as their respective interests may ultimately appear, and plaintiff is entitled to maintain this action.

**SEVENTH:** By reason of the premises, the defendant was negligent and careless in its handling of Plaintiff's subrogee's cargo, violated its duties and obligations as a common carrier and bailee of the cargo, and was otherwise at fault.

**EIGHTH:** Plaintiff and Plaintiff's subrogee have duly performed all duties and

obligations on their part to be performed.

**NINTH:** By reason of the premises, Plaintiff has sustained damages as nearly as same can now be estimated, no part of which has been paid, although duly demanded, in the total amount of \$17,430.66.

**W H E R E F O R E,** Plaintiff prays:

1. That a decree may be entered in favor of Plaintiff against Defendant for the amount of Plaintiff's damages, together with interest and costs.
2. Plaintiff further prays for such other, further and different relief as to this Court may deem just and proper in the premises.

Dated: New York, NY  
October , 2007

HILL RIVKINS & HAYDEN LLP  
Attorneys for Plaintiff

By: 

John Eric Olson (JO#4394)

Attorneys for Plaintiff  
45 Broadway, 15<sup>th</sup> Floor  
New York, New York 10006  
Tel.: 212-669-0600  
Fax: 212-669-0699

29639\003Complaint